

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1276 of 1998

in

FIRST APPEALNo 4172 of 1998

with

LETTERS PATENT APPEAL No 1277 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE and

MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

1 to 5 No

UNARMED POLICE HEAD CONSTABLE

Versus

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 1276 of 1998
MR MB GANDHI for Appellant
MRS PAREKH, AGP for Respondent State
2. LETTERS PATENT APPEALNo 1277 of 1998
MR MB GANDHI for Appellant
MRS PAREKH, AGP for Respondent State

CORAM : MR.JUSTICE S.D.DAVE and
MR.JUSTICE J.R.VORA

Date of decision: 12/02/99

ORAL COMMON JUDGEMENT : [Per: Dave, J.]

1. These orders shall govern the disposal of these two LPAs which have been retained on the file for a limited purpose with a view to examine the question under the Contempt of Courts Act, 1971.

2. The orders passed by the First Court while disposing of the CAs in these two LPAs make the entire picture clear. The Appeals have been directed against the common orders pronounced by the learned Single Judge in First Appeal No. 4172 of 1998 and 4173 of 1998. The appellants who are the alleged contemnors before us were working as Police Head Constables at the relevant time. Departmental proceedings came to be initiated against them on the charge that they had shown 'cowardice' while they were attacked by group of persons and had allowed these persons to snatch away a rifle from one of the appellants. When the appellants/ contemnors had received the notices of the departmental proceedings, they had filed Spl.C.A. No. 2688 of 1989 before this Court. This petition was later on dismissed as withdrawn. The learned Single Judge was pleased to order that if any adverse orders are passed in the departmental proceedings, the same would not be implemented for a period of 15 days. Thereafter, the appellants/ contemnors had filed two separate Civil Suits before the City Civil Court at Ahmedabad challenging the notices issued to them in the departmental proceedings. It appeared that the appellants/ contemnors had suppressed the fact of filing of the Spl. C.A. No. 2688 of 1989 and the subsequent dismissal of the same. The Civil Suits before the City Civil Court at Ahmedabad continued for some time. In the meanwhile, the departmental appeals came to be concluded and the appellants were imposed the penalty of demotion from the post of Police Head Constables to the post of the Police Constables. The Civil Suits came to be dismissed by the City Civil Court, Ahmedabad, and, therefore, First Appeal Nos. 4172 and 4173 of 1998 came to be filed before this Court.

3. These First Appeals have been dismissed by the learned Single Judge saying that learned counsel Mr. M.B. Gandhi who appears on behalf of the appellants/contemnors had said that the appellants may be permitted to withdraw the Appeals or this court may dismiss the appeals.

4. The LPA Bench has said that it appears as per the say of the learned Single Judge that the appellants have, *prima facie*, abused the process of the court and, therefore, these LPAs should be placed before the Bench taking up the contempt matters for the limited purpose. It is in this way that these two Letters Patent Appeals have been placed before us.

5. We have heard learned counsel Mr. M.B. Gandhi who appears for the appellants condemnors and the learned Government counsel Mrs. Parekh for the State.

6. Learned counsel Mr. Gandhi says that the departmental proceedings are over and the appellants/contemnors who were working as the Head Constables have been ordered to be demoted to the post of the Police Constables. Learned counsel points out that even before the learned Single Judge when the Appeals came for hearing, he had made a candid submission that either the appellants may be permitted to withdraw the Appeals, or else, the court may dismiss the same. Learned counsel urges that looking to this fact situation which cannot be disputed, the unconditional apology being tendered by the appellants should be accepted and the proceedings should end. Anyhow, the say of the learned Government Counsel is that looking to the facts of the case, a simple tendering of unconditional apology would not do and that the appellants/ contemnors should be dealt with appropriately under the Contempt of Courts Act, 1971.

7. It is true that the appellants/contemnors had concealed the material fact regarding the filing and the later dismissal of the petition before this court in two suits which they had filed before the City Civil Court, Ahmedabad, and that this action on the part of the appellants condemnors to see that the interim relief in the suit could be protracted for a pretty long time. But, ultimately, the appellants have, in fact, suffered in the departmental proceedings and they have been demoted.

8. In view of these facts and looking to the affidavit filed by the appellants/contemnors, we are of

the opinion that unconditional apology coming from them should be accepted.

9. Anyhow, one has to be aware of the fact that there was a material suppression on the part of the appellants because of which they could see that the Civil Suits and ultimately the departmental proceedings are protracted for a pretty long time. This has resulted to a great inconvenience to the State and the disciplinary authority. We, therefore, are of the opinion that even when we are accepting the unconditional apology coming from the appellants, they should be ordered to pay special cost to the Government. We, therefore, while disposing of these two proceedings, order each of the appellants/contemnors to pay an amount in sum of Rs. 1,000/- as a special cost in each of the two matters. This should be done within a period of one week hereof. This amount of special cost must come from the personal pocket of the appellants and not from the Government treasury. This cost amounts ultimately should go to the Government. Proceedings stand disposed of with these orders.

p.n.nair